

# Buchanan Ingersoll & Rooney PC

**Geoffrey G. Grivner**  
302 552 4207  
geoffrey.grivner@bipc.com

919 North Market Street, Suite 990  
Wilmington, DE 19801-3036  
T 302 552 4200  
F 302 552 4295

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## VIA CM/ECF

The Honorable Leonard P. Stark  
Circuit Judge, U. S. Court of Appeals for the Federal Circuit

Re: Xcoal Energy & Resources (“Xcoal”) v. Bluestone Energy Sales Corporation (“Bluestone”), Southern Coal Corporation (“SCC”), and James C. Justice, II (“Governor Justice”) (collectively, “Defendants”), C.A. No. 18-819-LPS

Dear Judge Stark:

Pursuant to the Court’s Oral Order dated June 2, 2023 (D.I. 220), the parties have met and conferred and hereby submit the below joint status report. Additionally, as set forth below, the parties request the scheduling of a discovery teleconference regarding the discovery directed to Governor Justice.

On June 7, 2023, Xcoal issued a letter to Defendants (“Discovery Letter”) regarding their respective responses and/or lack of responses to the Interrogatories and Requests for the Production of Documents in Aid of Execution directed to each of the Defendants (the “Discovery Requests”). As stated previously, Defendants SCC and Bluestone issued written responses and produced certain documents in response to the Discovery Requests. Defendant Governor Justice, however, has neither issued written responses nor produced documents pursuant to the Discovery Requests. (*See* D.I. 216).

First, Xcoal contends that the written responses and documents produced in response to the Discovery Requests by Defendants SCC and Bluestone are deficient, and Xcoal outlined its concerns in the Discovery Letter. Earlier today, the parties met and conferred via teleconference regarding the Discovery Letter. During the teleconference, Defendants’ counsel responded verbally to the various issues identified in the Discovery Letter, and made certain representations regarding the availability and/or purported lack of availability of certain documents and information, and SCC’s and/or Bluestone’s ability to supplement their document productions and/or written discovery responses. Defendants’ counsel also has agreed to provide a written response to the Discovery Letter by Wednesday, June 14, 2023, documenting such representations and addressing the matters raised in the Discovery Letter. Defendants’ counsel, however, could not provide a date by which Defendants SCC and Bluestone would supplement their written responses and document productions. Xcoal reserves its right to seek judicial relief on this score.

Second, pursuant to the Discovery Letter, Xcoal reiterated its demand for payment of the remaining

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amount due of \$1,917,222.32, plus post-judgment interest. During today's meet and confer, Defendants' counsel did not indicate that payment would be forthcoming.

Third, with respect to the Discovery Requests directed to Governor Justice, the parties are at an impasse. As discussed during the June 2<sup>nd</sup> status conference, Defendants' counsel indicated for the first time earlier in the afternoon that Governor Justice would request that the Court defer the Discovery Requests directed to his attention. During today's meet and confer teleconference, Defendants' counsel confirmed that Governor Justice would not be responding to the Discovery Requests at this time and would seek relief from the Court.

Pursuant to Section 3.g. of the Scheduling Order issued in this matter and dated August 2, 2018 (D.I. 17), the parties in the above-referenced matter write to request the scheduling of a discovery teleconference and the issuance of a schedule for the submission of letter briefs prior thereto. The following attorneys, including at least one Delaware Counsel and at least one Lead Counsel per party, participated in the verbal meet and confer teleconference that took place earlier this afternoon and which teleconference is referenced herein:

Delaware Counsel in Attendance: John A. Sensing and Geoffrey G. Grivner.

Lead Counsel in Attendance: John A. Sensing and Daniel C. Garfinkel.

The dispute requiring judicial attention concerns Governor Justice's position that this Court should issue a protective order deferring Governor Justice's obligation to respond to the Discovery Requests.

The parties appreciate Your Honor's attention to these matters.

Sincerely yours,

*/s/ Geoffrey G. Grivner*

Geoffrey G. Grivner (#4711)

GGG/

cc: All Counsel of Record via ECF